



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 17, 1996

Ms. Sandra C. Joseph
Open Records Counsel/Disclosure Officer
Comptroller of Public Accounts
P. O. Box 13528
Austin, Texas 78711

OR96-0971

Dear Ms. Joseph:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 40423.

The Comptroller of Public Accounts (the "comptroller") received an open records request for "a copy of the written complaint, together with a copy of the envelope it was mailed in, alleging that Martha J. Devall performs palm reading and Tarot card reading as an occupation without remitting the required sales tax." You contend that the comptroller may withhold the complaint pursuant to the informer's privilege, since the information tends to reveal the complainant's identity.¹ Further, you state that the envelope, which may have accompanied the complaint, "has been thrown away."²

In *Roviaro v. United States*, 353 U.S. 53, 59 (1957), the United States Supreme Court explained the rationale that underlies the informer's privilege:

What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of violations of law to officers

¹You assert that you are forwarding to the requestor a copy of a list provided to the comptroller, which includes the names of others who have possibly engaged in similar acts as Ms. Devall, since "there is no information on that list that could identify the informant."

²Since the envelope has been discarded or never existed you need not comply with this request. See Open Records Decision No. 605 (1992), Open Records Decision No. 445 (1986) (Open Records Act does not require governmental body to obtain information not in its possession or to prepare new information in response to open records request).

charged with enforcement of that law. [Citations omitted.] The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to law-enforcement officials and, by preserving their anonymity, encourages them to perform that obligation.

The informer's privilege, as incorporated into section 552.101 of the Government Code,³ protects the identity of persons who report violations of the law to officials responsible for enforcing those laws. *See generally* Open Records Decision No. 515 (1988). The privilege does not protect the contents of communications if they do not reveal the identity of the informant. *Roviaro*, 353 U.S. at 60. You have demonstrated to this office that the individual whose identity you seek to protect reported potential violations of state law, which carry penalties. Assuming that this individual's identity has not been previously revealed to the requestor, this office agrees that the commission may withhold the information you have marked pursuant to the informer's privilege.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Sam Haddad
Assistant Attorney General
Open Records Division

SH/ch

Ref.: ID# 40423

Enclosure: Submitted document

cc: Ms. Gretchen Raatz
Attorney at Law
P. O. Box 50269
Austin, Texas 78763
(w/o enclosure)

³Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."